

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS (SHERMAN)
CASE NO 4:13-CR-00038-MAC-KPJ-16**

UNITED STATES OF AMERICA

V

HERMES ALIRIO CASANOVA ORDONEZ

MOTION TO WITHDRAW PLEA AGREEMENT

COMES NOW the defendant, through undersigned counsel, and respectfully alleges and prays:

1. This matter was set for sentence by video on July 6, 2017 at 2:00 PM
2. On June 9, 2017, the Court granted the defendant's Motion to Continue Sentence to be set for a later date, DE 652.
3. The undersigned entered his appearance in the case on April 11, 2017 at which time the defendant had filed a Plea Agreement on September 26, 2016,
4. The Plea Agreement was signed by the defendant while the defendant was still in Colombia awaiting extradition to the United States. The defendant signed the Plea Agreement on May 6, 2015 and made his first appearance before the Court on May 12, 2016 – approximately one year after signing the Plea Agreement. The government signed the Plea Agreement after the defendant arrived in the United States.
5. The defendant was represented by attorney James Balagia who entered his appearance in the case on December 22, 2014. Said representation continued throughout the period

the defendant was in Colombia awaiting extradition until the undersigned entered his appearance on April 11, 2017.

6. Clearly, during the extended period of time prior counsel represented the defendant he was not “functioning as the counsel” guaranteed by the Sixth Amendment, *Strickland v Washington* 466 U.S. 668 (1984).
7. Prior counsel has since been indicted in this District for matters relating to his defense in this case, *United States v Balagia* 4:16-cr-00176.
8. The undersigned has been able to review ample discovery provided in this case and discern from debriefings the unseemly likelihood that prior counsel was in fact working to prejudice his own client when he had the defendant sign the Plea Agreement while still in Colombia on May 6, 2015.
9. The defendant has accepted responsibility in this case and the purpose of this Motion is not to retract that acceptance. The defendant however does wish to negotiate a Plea Agreement with the assistance of counsel that is working on behalf of his best interests under the facts of the case.
10. The undersigned has discussed this matter with AUSA Ernest Gonzalez who takes “no position” on the matter.

WHEREFORE IT IS RESPECTFULLY PRAYED THE COURT ALLOW THE DEFENDANT TO WITHDRAW HIS PLEA AGREEMENT AND AFFORD THE DEFENDANT A REASONABLE PERIOD TO ENTER INTO A NEW PLEA AGREEMENT WITH THE GOVERNMENT

Respectfully,

/s/Scott Kalisch

SCOTT KALISCH

CERTIFICATE OF CONFERENCE

I hereby certify that I have consulted the contents of this Motion with AUSA Ernest Gonzalez and that he takes no position on the matter.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed copy of this Motion to AUSA Ernest Gonzalez my EM/ECF electronic filing this 4th day of July 2017

/s/Scott Kalsich

SCOTT KALISCH

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